

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940, AS AMENDED

1. PURPOSE: This circular provides guidance on VA's position with respect to the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. App. sections 501-590) (hereafter referred to as either SSCRA or the Act).

2. PURPOSE OF SSCRA: SSCRA was originally enacted prior to World War II when there was an ongoing draft into active military service. The purpose of the Act is to promote and strengthen the national defense by suspending enforcement of certain civil liabilities of certain persons serving in the armed forces. Therefore, when a borrower's ability to meet his or her obligations has been impaired due to military service, certain relief is afforded against the penalties that would otherwise be imposed for nonpayment of such obligations. In addition, the relief provisions include the right, in some cases, to make reduced payments on obligations, and also protections through the courts against foreclosure.

3. ADDITIONAL SSCRA APPLICABILITY: Members of the Reserves or National Guard who have home loans, and are called to active military service, may also be entitled to protection under the Act. In order for a veteran to qualify for certain protections available under the Act, his or her obligation must have originated prior to the current period of active military service. As an example, a loan originated during a period of break in service between active duty tours would appear to meet this requirement. Also meeting the requirement would be a loan originated during a period of active military service that was followed by a break in service. A VA-guaranteed loan that used entitlement obtained through Reserve or National Guard service prior to a call to active duty would also appear to meet the requirement. In the case of a secured loan obligation, certain protections apply only if the property is still owned by the veteran during the current period of active service. Benefits under the Act may also extend to co-obligors on a loan.

4. ENFORCEMENT OF THE ACT: VA is not charged with enforcement of the Act, as that is delegated to any court of competent jurisdiction of the United States or of any State. However, VA will perform its mission of serving veterans by making every effort to ensure that they receive the protections to which they are entitled. This circular should not be construed as providing legal advice to veterans or loan holders with respect to requirements of the Act, and all parties are cautioned not to rely on the guidance in this circular without obtaining legal counsel's concurrence.

5. RELIEF UNDER THE ACT: In general, the Act provides broad potential relief from obligations to persons in military service. VA considers certain provisions of the Act to be very important to program participants and the following, while not intended to be substituted for the advice of counsel, is designed to inform program participants in a general way about provisions of the law.

a. Six Percent Interest Rate Limitation: When the Act applies (as described in paragraphs 2 and 3), any obligation or liability, such as a home loan, bearing interest at a rate in excess of 6 percent per annum is, during the veteran's period of active duty, reduced to a rate of no more than

6 percent (50 U.S.C. App. 526). The rate cap of 6 percent is calculated to include any fees or other charges otherwise payable on the loan (e.g., late charges).

(1) Effective Date of Lower Rate: The Act is silent as to any actions which the veteran must take to begin payments at the lower rate. Absent a specific requirement, veterans (or their spouses, other co-obligors or legal representatives) should, however, be encouraged to notify their loan holder before beginning payments at the reduced rate. Veterans should also be encouraged to cooperate with their loan holders by providing information which will help demonstrate their eligibility for benefits available under the Act. Loan holders are cautioned to review their payment processing procedures in order to ensure that payments in the amount allowable under the Act are not inappropriately returned to borrowers as insufficient, even though no prior notice may have been received. Loan holders should also be prepared to respond to inquiries from veterans as to the amount of the monthly installment payment which would be required at a 6 percent interest rate and to provide revised payment cards or coupon books when appropriate.

(2) Action to Increase Rate: In order to restore application of the original interest rate on the note during an obligor's period of military service, the holder must apply to a court and show that the veteran's ability to repay the obligation has not been materially affected by military service. The court "may take such order as in its opinion may be just" with respect to the rate of interest due and payable.

(3) Timelessness of Rate Reduction: At the time the Act became law, an interest rate of 4 percent or less was typical for home loans. The fact that interest rates are currently higher does not, however, affect the applicability of the Act.

(4) VA Liability on Loans under the Act: The Office of the General Counsel has determined that, for purposes of accounting between VA and a loan holder when a claim is filed under Loan Guaranty, VA's liability will not exceed the liability of the veteran. Since the veteran is not obligated to pay interest at a rate in excess of 6 percent, VA as guarantor is not obligated to include interest on the obligation in excess of 6 percent for the period of time that the veteran was eligible under the provisions of the Act. However, if the holder obtained permission from a court of competent jurisdiction to obligate the veteran under the terms of the original obligation or to modify those terms, VA would be bound to honor the court's decision.

b. Stay in Enforcement: In addition to an interest rate reduction, the Act provides for a separate form of forbearance which a veteran can obtain through order of a court if he or she applies for it during his or her period of military service or within 6 months after separation (50 U.S.C. App. 590). If the court finds that the ability of the veteran to maintain the obligation has been materially affected by entry into military service, it can issue a stay in the enforcement of the obligation and grant other relief the court considers just.

(1) Combination of Rate and Stay: The Act does not specifically relate relief under this provision to the interest rate reduction to which the veteran may be entitled. It is therefore unclear whether these provisions are mutually exclusive or may be combined.

(2) Cooperation is Best Approach: In view of the broad powers granted to courts to provide payment relief to military personnel, loan holders are encouraged to negotiate reasonable partial payment and repayment schedules with borrowers in order to minimize the need for costly and time-consuming litigation.

c. Foreclosure: Court permission is usually necessary to foreclose a loan that falls under the provisions of the Act. Foreclosure sales (or manufactured housing repossessions) during the veteran's period of military service, or within 3 months thereafter, will be invalid unless: (1) they take place pursuant to a written agreement between the parties involved, or (2) they are initiated "upon an order previously granted [the holder] by the court and a return thereto [is] made and approved by the court". In other words, approval before proceeding with a power of sale foreclosure and subsequent court confirmation of sale may be necessary. In reaching a decision, the court has broad discretion, but will primarily be guided by consideration as to whether military service has affected the obligor's ability to maintain the obligation or answer any legal proceeding, such as foreclosure, brought by the creditor. (50 U.S.C. App. 532).

(1) Affidavit of Military Status: Many foreclosure actions require affidavits about the active duty military status of the obligors, and the accuracy of such items is very important in order to avoid title defects and possible penalties of imprisonment and/or fines for violations of the provision of the Act, or for attempts to violate its provisions.

(2) Know the Law: Loan holders are encouraged to become familiar with the Act in order to avoid losses associated with foreclosures which might actually be prevented through the exercise of forbearance, and to ensure compliance with any restrictions on foreclosures which may apply in their particular areas of operation.

d. Additional Stays: A veteran-borrower can petition a court of competent jurisdiction during the period of military service or within 60 days thereafter to request any action or proceeding be stayed (50 U.S.C. App. 521). Furthermore, the veteran-borrower can petition a court for a complete stay against enforcement of the loan obligation (50 U.S.C. App. 590). Court determinations for any of these actions will weigh heavily upon whether or not the veteran-borrower's ability to discharge the obligation is materially affected by reason of his or her military service. However, nothing in the Act prevents modification or termination of loan agreements pursuant to a written agreement between the parties involved executed during or after the period of military service of the person concerned (50 U.S.C. App. 517).

e. Rights of Redemption: The Act places a different restriction on redemption periods than on foreclosure sales; namely, any statutory redemption period stops running during the veteran's current tour of military service and resumes after separation (50 U.S.C. App. 525). This restriction applies with respect to any redemption period which would otherwise run as a result of a foreclosure action against a person in military service, regardless of whether or not the mortgage was executed prior to the current period of service. The extension of a redemption period may affect VA's ability to market property acquired subject to redemption; it will not, however, be considered a title defect which would make a conveyance unacceptable.

6. SOURCES OF ADVICE: VA's advice to veterans and their families will encourage them to seek cooperation from their loan holders and to discuss other possibilities with private counsel and military attorneys, as necessary. VA is not in a position to offer legal advice to veterans or loan holders concerning requirements of the Act or possible interpretations by local courts. One source of such advice for veterans (which may also be of benefit to servicers) is publication JA 260, Soldiers' and Sailors' Civil Relief Act Guide, prepared by The Judge Advocate General's School, U.S. Army.

7. THE ACT AND STATE LAWS: Holders should obtain opinions from their own counsel to ensure compliance with all provisions of the Act, as well as other local statutes requiring the extension of forbearance, so as not to invalidate a foreclosure. In some States, specific statutes have been enacted which have provisions that may be similar or identical to those found in the Act and, in some States, local statutes may afford obligors greater rights and protections than those provided by the Act. Differences in interpretation on individual cases should be brought to the attention of the appropriate VA Regional Loan Centers, so they may consult local Regional Counsels and attempt to reconcile such differences fairly and without disruption in program operations.

8. ADDITIONAL FORBEARANCE: It has been the longstanding policy of VA to encourage loan holders to extend all reasonable forbearance in the event a borrower becomes unable to meet the terms of a VA loan. This policy is especially appropriate when delinquencies may be the direct result of disruptions due to special military actions, such as unexpected deployments causing family separations and financial burdens for active duty military members. Financial difficulties may be even more severe in such situations for members of the Reserves or National Guard who may be unexpectedly called to active duty for extended periods of time. If it appears that more than simple forbearance is warranted, VA regulations allow holders considerable latitude in modifying the terms of a loan to prevent foreclosure and to help the borrower retain and pay for his or her home. Such modifications may include loan extension, reamortization and interest rate reduction refinancing to prevent and/or cure a default.

By Direction of the Under Secretary for Benefits

Keith Pedigo, Director
Loan Guaranty Service

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Exhibit A

Subject: Soldiers' and Sailors' Civil Relief Act of 1940, as amended

The President has authorized the call to active military duty of as many as 50,000 National Guard and Reservists. VA is concerned that some of those called to active duty may encounter financial difficulties, similar to the many other home loan borrowers who have been affected by the tragic events of September 11, 2001. We previously requested your careful consideration of forbearance for those affected by the attacks, and would expect similar consideration for National Guard and Reservists. However, those veterans may also qualify for the special forbearance provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. VA recently issued a circular providing guidance on that Act, and this letter tells about that circular and how you may obtain the information. It also provides guidance on local concerns about relief for active military members.

VBA Circular 26-01-10

On September 26, 2001, the Director of VA's Loan Guaranty Service issued a circular providing extensive guidance on the Soldiers and Sailors' Civil Relief Act of 1940, as amended. VA is not given any special authority to enforce the Act, but is very interested in ensuring that loan holders are aware of the Act and the special protections it affords our nation's veterans on active duty.

Loan Guaranty Website

An extract of the above referenced circular may be found on the VA Loan Guaranty website at www.homeloans.va.gov on the Lenders and Servicers page by clicking on the "What's New" button. Servicers should frequently check this page as we attempt to distribute more information via the internet.

Additional Local Concerns

While the Soldiers' and Sailors' Civil Relief Act of 1940 may add certain requirements to all foreclosure proceedings, we are also concerned about local requirements in our jurisdiction that may provide similar or more extensive relief. After checking with our Regional Counsels we are pleased to provide the following guidance on the States in our jurisdiction. *[Insert results of consultations with Regional Counsels as to whether there are any additional requirements.]*